136

(2) Supreme Court, U.S.
FILED
09-183 AUG 5 - 2009
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No.

In the Supreme Court of the United States

Dianna Joyce Roberts,

Petitioner,

v.

Bank of New York, as successor trustee under the pooling & serving agreement dated Sept. 1998, WMC Series 1998-B without recourse, their successors and assigns (sic),
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

BANK OF NEW YORK AS SUCCESSOR TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT DATED SEPTEMBER 1, 1998, WMC SERIES 1998-B| WITHOUT RECOURSE, THEIR SUCCESSORS AND ASSIGNS,

Plaintiff,

v.

DIANNA JOYCE ROBERTS, DOROTHY H. MEAD; and ALL OTHER TENANTS,

Defendants.

No. 06-F-025062

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Court for trial on March 9, 2007. Plaintiff appeared by and through its attorney, Linda Johannsen of Kirkpatrick & Lockhart Preston Gates Ellis LLP. Defendants Dianna Joyce Roberts and Dorothy h. Mead personally appeared. The Court reviewd the certified documents submitted by Plaintiff (Exhibits 1, 2, 3, 6, 7, 8, and 0). The Court heard testimony from Defendants' witnesses Linda Johannsen and Dianna Joyce Roberts. The Court reviewed Defendants' documents (Exhibits 101 and 102).

Defendant Roberts filed a document entitled "Defendant Roberts' Mandatory Judicial Notice of Pending Federal Case on Same Issues which Predates this Action,' which shall be treated as a motion (the 'Judicial Notice Motion"). Numerous exhibits are attached to the Judicial Notice Motion, including (a) the Trustee's Deed; (b) an Affidavit of lost note; (c) Attorney Bidding Instructions; (d) an Appointment of Successor Trustee; (e) a Warranty Deed; and (f) a Second Amended Complaint (with exhibits).

After listening to the evidence presented and reviewing the exhibits admitted, the Court makes the following Findings of Fact and Conclusions of Law:

1. The Appointment of Successor Trustee (Defendants' Exhibit 101) is a sworn and notarized document signed by Brian Jones. The Court finds that Brian Jones had authority and that the appointment of Linda Johannsen as successor trustee was lawful.

2. The Court takes judicial notice only that the documents attached by Defendants to the Judicial Notice Motion are in the file. The Court does not take judicial notice of the content of any of the documents. Three of the documents—the Trustee's Deed (Plaintiff's Exhibit 1); the Warranty Deed (Plaintiff's Exhibit 2); and the Appointment of Successor Trustee (Defendants' Exhibit 101) were

admitted separately which moots the need for judicial notice on those specific documents.

3. The nonjudicial foreclosure sale took place and the property was sold.

4. The Trustee's Deed recites the events necessary to conduct the sale.

5. Defendants are attempting to attack the underlying events to the foreclosure.

6. The standard of proof in this matter is by the preponderance of the evidence.

7. Plaintiff has established the elements necessary to obtain possession of the property under ORS 105.105 to 105.168 and ORS 86.755(5).

8. Counterclaims are not allowed in eviction proceedings pursuant to ORS 105.132. The Court finds for Plaintiff on Defendants' counterclaims.

9. The Court finds for Plaintiff on all of Defendants' affirmative defenses.

10. The Court finds that judgment shall be granted to Plaintiff for possession of the property.

Hon. Ronald E. Cinniger, Multnomah County Circuit Court Judge

FILED: October 15, 2008

IN THE COURT OF APPEALS OF THE STATE OF OREGON

BANK OF NEW YORK, as successor trustee under the pooling & servicing agreement dated Sept. 1, 1998, WMC Series 1998-B without recourse, their successors and assigns,

v.

DIANNA JOYCE ROBERTS
Defendant-Appellant.

Multnomah County Circuit Court
06F025062, 06F025063

A135503 (Control)
A135505

Marshall L. Amiton, judge.

Submitted on September 05, 2008.

Before Landau, Presiding Judge, and Brewer, Chief Judge, and Ortega, Judge.

Attorney for Appellant: Dianna Joyce Roberts *pro se*.

Attorney for Respondent: M. Elizabeth Duncan.

AFFIRMED WITHOUT OPINION

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

[ ] No costs allowed.
[x] Costs allowed, payable by Appellant.

IN THE SUPREME COURT OF THE STATE OF OREGON

BANK OF NEW YORK, as successor trustee under the pooling & servicing agreement dated Sept. 1, 1998, WMC Series 1998-B without recourse, their successors and assigns,

Plaintiff-Respondent,

Respondent on Review,

v.

DIANNA JOYCE ROBERTS

Defendant-Appellant,

Petitioner on Review

Multnomah County Circuit Court

06F025062, 06F025063

A135503 (Control)

A135505

S056852

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.

March 4, 2009
DATE

/s/ Paul J. De Muniz
CHIEF JUSTICE

c: M Elizabeth Duncan
Dianna Joyce Roberts

Vb/S056852odpr090304

ORDER DENYING REVIEW

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Sectin, Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

IN THE COURT OF APPEALS OF THE STATE OF OREGON

BANK OF NEW YORK, as successor trustee under the pooling & servicing agreement dated Sept. 1, 1998, WMC Series 1998-B without recourse, their successors and assigns,

v.

DIANNA JOYCE ROBERTS
Defendant-Appellant.

Multnomah County Circuit Court
06F025062, 06F025063

A135503 (Control)
A135505

APPELLATE JUDGMENT

Marshall L. Amiton, Judge, Dale R. Koch, Judge.

Submitted on September 5, 2008.

Before Landau, Presiding Judge; Brewer, Chief Judge; and Ortega, Judge.

Attorney for Appellant: Dianna Joyce Roberts *pro se*.

Attorney for Respondent: M. Elizabeth Duncan.

AFFIRMED WITHOUT OPINION

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent [x] Costs allowed, payable by Appellant.

MONEY AWARD

JUDGMENT #1

Creditor(s): Bank of New York
Attorney: M. Elizabeth Duncan, 1515 SW Fifth Ave Ste 600, Portland OR 97201
Debtor(s): Dianna Joyce Roberts
Attorney: Dianna Joyce Roberts
Costs: $429.00
Total Amount: $429.00
Interest: Simple, 9% per annum, from the date of this appellate judgment.

Appellate Judgment
Effective Date: July 2, 2009

APPELLATE JUDGMENT

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Sectin, Supreme Court Building, 1163 State Street, Salem, OR 97301-2563